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with the tuna tracking and verification requirements of §216.94;

(3) The tuna or tuna products are accompanied by a properly completed FCO;

(4) The tuna or tuna products meet the dolphin-safe labeling standards under §216.91; and

(5) The FCO is properly endorsed by each processor certifying that, to the best of his or her knowledge and belief, the FCO and attached documentation are complete and accurate.

(b) *Imported tuna.* Tuna or tuna products harvested in the ETP by purse seine vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States are dolphin safe if:

(1) The tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that has obtained an affirmative finding of §216.24(f)(9);

(2) The tuna or tuna products are accompanied by a properly completed FCO;

(3) The tuna or tuna products are accompanied by valid documentation signed by a representative of the appropriate IDCP member nation, certifying that:

(i) There was an IDCP approved observer on board the vessel(s) during the entire trip(s); and

(ii) The tuna contained in the shipment were caught according to the dolphin-safe labeling standards of §216.91;

(4) The documentation provided in paragraph(b)(3) of this section includes a listing of vessel names and identifying numbers of the associated Tuna Tracking Forms for each trip of which tuna in the shipment originates; and

(5) The FCO is properly endorsed by each exporter, importer, and processor certifying that, to the best of his or her knowledge and belief, the FCO and attached documentation are complete and accurate.

[65 FR 57, Jan. 3, 2000]

§216.93 Submission of documentation.

(a) Requirements for the submission of documents concerning the activities of U.S. flag vessels with greater than 400 st carrying capacity fishing in the ETP are contained in §216.94.

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(b) The import documents required by §§216.91 and 216.92 must accompany the tuna product whenever it is offered for sale or export, except that these documents need not accompany the product when offered for sale if:

(1) The documents do not require further endorsement by any importer or processor and are submitted to officials of the U.S. Customs Service at the time of import; or

(2) The documents are endorsed as required by §216.92(b)(4) and the final processor delivers the endorsed documents to the Administrator, Southwest Region, or to U.S. Customs as required.

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§216.94 Tracking and verification program.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the “dolphin-safe” condition of tuna, under the standards set forth in §216.91(a). The tracking program includes procedures and reports for use when importing tuna into the U.S. and during U.S. purse seine fishing, processing, and marketing in the U.S. and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the IDCP.

(a) *Tuna tracking forms.* Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDCP approved Tuna Tracking Forms (TTFs), bearing the IATTC cruise number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record “dolphin-safe” sets and a second TTF is used to record “non-dolphin-safe” sets. The information entered on the TTFs following each set includes date of trip, set number, date of loading, name of the vessel, vessel Captain’s name, observer’s name, well number, weights by species composition, estimated tons loaded, and date of the set. The observer and the vessel engineer initial the entry for each set, and the vessel Captain and observer review and

sign both TTFs at the end of the fishing trip certifying that the information on the form is accurate. The captain's and observer's certification of the TTF on which dolphin-safe sets are recorded complies with 16 U.S.C. 1385(h).

(b) *Tracking fishing operations.* (1) During ETP fishing trips by purse seine vessels, tuna caught in sets designated as "dolphin-safe" by the vessel observer must be stored separately from tuna caught in "non-dolphin-safe" sets from the time of capture through unloading, except as provided in paragraph (b)(2) of this section. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is "dolphin-safe" or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as "dolphin-safe" if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as "non-dolphin-safe" if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated "non-dolphin-safe" or "mixed well" is considered "non-dolphin-safe" tuna. Except as provided for in paragraph (b)(2)(i) of this section, the observer will change the designation of a "dolphin-safe" well to "non-dolphin-safe" if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured.

(2) *Mixed wells.* Only two acceptable conditions exist under which a "mixed" well can be created.

(i) In the event that a set has been designated "dolphin-safe" by the observer, but during the loading process dolphin mortality or serious injury is identified, the "dolphin-safe" designation of the set will change to "non-dolphin-safe." If one or more of the wells into which the newly designated "non-dolphin-safe" tuna are loaded already contains "dolphin-safe" tuna loaded during a previous set, the observer will note in his or her trip records the well numbers and the estimated weight of such "non-dolphin-safe" tuna and designate such well(s) as "mixed well(s)."

Once a well has been identified as "non-dolphin-safe" or "mixed" all tuna subsequently loaded into that well will be designated as "non-dolphin-safe." When the contents of such a "mixed well" are received by a processor, the tuna will be weighed and separated according to the observer's report of the estimated weight of "dolphin-safe" and "non-dolphin-safe" tuna contained in that well. In addition, 15 percent of the "dolphin-safe" tuna unloaded from the "mixed well" will be designated as "non-dolphin-safe."

(ii) Near the end of an ETP fishing trip, if the only well space available is in a "non-dolphin-safe" well, and there is an opportunity to make one last set, "dolphin-safe" tuna caught in that set may be loaded into the "non-dolphin-safe" well. The "dolphin-safe" tuna must be kept physically separate from the "non-dolphin-safe" tuna already in the well, using netting or other material.

(3) The captain, managing owner, or vessel agent of a U.S. purse seine vessel returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours notice of the vessel's intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.

(4) If the trip terminates when the vessel enters port to unload part or all of its catch, new TTFs will be assigned to the new trip, and any information concerning tuna retained on the vessel will be recorded as the first entry on the TTFs for the new trip. If the trip is not terminated following a partial unloading, the vessel will retain the original TTFs and submit a copy of those TTFs to the Administrator, Southwest Region, within 5 working days. In either case, the species and amount unloaded will be noted on the respective originals.

(5) Tuna offloaded to trucks, storage facilities or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the "dolphin-safe" or "non-dolphin-safe" designation of the tuna as it left the fishing vessel.

(6)(i) When ETP caught tuna is to be offloaded from a U.S. purse seiner directly to a U.S. canner within the 50

states, Puerto Rico, or American Samoa, or in any port and subsequently loaded aboard a carrier vessel for transport to a U.S. processing location, a NMFS representative may meet the U.S. purse seiner to receive the TTFs from the vessel observer and to monitor the handling of “dolphin-safe” and “non-dolphin-safe” tuna.

(ii) When ETP caught tuna is offloaded from an U.S. purse seiner in any port and subsequently loaded aboard a carrier vessel for transport to a cannery outside the jurisdiction of the United States, a NMFS representative may meet the vessel to receive copies of the TTFs from the observer and monitor the offloading. The U.S. caught tuna becomes the tracking and verification responsibility of the foreign buyer when it is offloaded from the U.S. vessel.

(iii) If a NMFS representative does not meet the vessel in port at the time of arrival, the observer may take the signed TTFs to the IATTC office and mail copies to the Administrator, Southwest Region, from that location within 5 working days of the end of the trip.

(iv) When ETP caught tuna is offloaded from a U.S. purse seiner directly to a processing facility located outside the jurisdiction of the United States in a country that is a party to the IDCP, the national authority in whose area of jurisdiction the tuna is to be processed will assume the responsibility for tracking and verification of the tuna offloaded. A representative of the national authority will receive copies of the TTFs from the observer, and copies of the TTFs will be forwarded to the Administrator, Southwest Region.

(c) *Tracking cannery operations.* (1) Whenever a tuna canning company in the 50 states, Puerto Rico, or American Samoa is scheduled to receive a domestic or imported shipment of ETP caught tuna for processing, the company must provide at least 48 hours notice of the location and arrival date and time of such a shipment, to the Administrator, Southwest Region, so that a NMFS representative can be present to monitor delivery and verify that “dolphin-safe” and “non-dolphin-safe” tuna are clearly identified and remain segregated.

(2) At the close of delivery activities, which may include weighing, boxing or containerizing, and transfer to cold storage or processing, the company must provide a copy of the processor’s receiving report to the NMFS representative, if present. If a NMFS representative is not present, the company must submit a copy of the processor’s receiving report to the Administrator, Southwest Region, electronically, by mail, or by fax within 5 working days. The processor’s receiving report must contain, at a minimum: date of delivery, catcher vessel name and flag, trip number and dates, storage container number(s), “dolphin-safe” or “non-dolphin-safe” designation of each container, species, product description, and weight of tuna in each container.

(3) Tuna canning companies will report on a monthly basis the amounts of ETP-caught tuna that are removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (c)(5) of this section. This report must contain:

- (i) The date of removal;
- (ii) Storage container number(s) and “dolphin-safe” or “non-dolphin-safe” designation of each container; and
- (iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During canning activities, “non-dolphin-safe” tuna may not be mixed in any manner or at any time in its processing with any “dolphin-safe” tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(5) Canned tuna processors must submit a report to the Administrator, Southwest Region, of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports must be submitted electronically or by mail before the last day of the month following the month being reported. Monthly reports must contain the following information:

- (i) *Domestic receipts:* species, condition (round, loin, dressed, gilled and gutted, other), weight in short tons to

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the fourth decimal, ocean area of capture (eastern tropical Pacific, western Pacific, Indian, eastern and western Atlantic, other), catcher vessel, trip dates, carrier name, unloading dates, and location of unloading.

(ii) *Import receipts*. In addition to the information required in paragraph (c)(5)(i) of this section, a copy of the FCO for each imported receipt must be provided.

(d) *Tracking imports*. All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO as required by § 216.24(f).

(e) *Verification requirements*.—(1) *Record maintenance*. Any exporter, transshipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must maintain records related to that tuna for at least 3 years. These records include, but are not limited to: FCO and required certifications, any report required in paragraph (a) and (b) of this section, invoices, other import documents, and trip reports.

(2) *Record submission*. Within 30 days of receiving a written request from the Administrator, Southwest Region, any exporter, transshipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must submit to the Administrator any record required to be maintained under paragraph (e)(1) of this section.

(3) *Audits and spot-checks*. Upon request of the Administrator, Southwest

Region, any such exporter, transshipper, importer, or processor must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, and processed tuna.

(f) *Confidentiality of proprietary information*. Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216-100 “Protection of Confidential Fisheries Statistics.”

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§ 216.95 False statements or endorsements.

Any person who knowingly and willfully makes a false statement or false endorsement required by § 216.92 is liable for a civil penalty not to exceed \$100,000, that may be assessed in an action brought in any appropriate District Court of the United States on behalf of the Secretary.

§ 216.96 Official mark for “Dolphin-safe” tuna products.

(a) This is the “official mark” (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the “dolphin-safe” standards set forth in the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385, and implementing regulations at §§ 216.91 through 216.94: